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Client Alert:
Employee Benefits

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Supreme Court Says It's Legal, Now Deal With It: What's Next Under Health Care Reform?

Overview

In perhaps the most pivotal court ruling involving the scope of Congressional powers in the last century, the U.S. Supreme Court ruled yesterday that the Patient Protection and Affordable Care Act ("ACA") (sometimes known as "Obamacare" or "health care reform") is constitutional. This Client Alert is directed to employers that sponsor group health care plans, and reviews the steps employers should take now in order to be ready to address the upcoming requirements under ACA.

The Most Significant ACA Changes Are Yet to Come

The U.S. Supreme Court decision held that a central tenet of ACA – the requirement that virtually every individual in the United States have health coverage in place beginning in 2014 or pay a penalty--is constitutional. The full opinion (weighing in at 193 pages) is available via the following link: http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf. Congress and politicians have vowed to change portions of ACA or to work toward complete reversal of ACA, and that battle will rage on into the foreseeable future (but may not rage much until after the November elections). What most employers may be wondering, however, is what they need to do now, in order to remain in compliance with the multitude of other requirements imposed by ACA. Below is a brief discussion of what employers can do to prepare for a few of the more important aspects of ACA that have yet to take effect. In addition to compliance with ACA, employers with fully insured group health plans will need to consider state law plan coverage and design requirements and other aspects of state law impacting their plans.

Preventative Care Mandates

ACA requires non-grandfathered group health plans to provide certain women's and child preventative care services without imposing cost sharing requirements. These services are required for plan years beginning on or after August 1, 2012. Many religious groups have objected to some of the women's preventative care mandates (e.g., contraception coverage). The Department of Health and Human Services ("HHS") issued exceptions for religious organizations, an exemption and a temporary enforcement safe harbor. The temporary enforcement safe harbor will be in effect only until the first plan year that begins on or after August 1, 2013. Among other things, in order to qualify for the temporary safe harbor, a religious organization must provide to participants a prescribed notice which states that contraceptive coverage will not be provided under the plan for the first plan year beginning on or after August 1, 2012 and self-certify that it satisfies the HHS requirements. Employers in Michigan should be aware that in 2006, the Michigan Civil Rights Commission issued a declaratory ruling on contraceptive equity which included a religious employer exemption similar to, though somewhat broader than, the federal exemption.

Summary of Benefits and Coverage Requirement

ACA mandates that plan administrators distribute a summary of benefits and coverage meeting certain content and format requirements, in time for open enrollment associated with the first plan year that begins on or after September 23, 2012. Employers need to ensure that they are prepared to distribute these summaries, and may need to coordinate preparation of the summary between various plan service providers and insurers. Insurance or third party administration agreements may need to be revised to address this.

Prohibition on Preexisting Condition Exclusions

ACA prohibited application of preexisting condition exclusions on children under age 19. This prohibition extends to all participants effective January 1, 2014.

Health FSA Contribution Cap of $2,500

ACA provides that effective in 2013, health care flexible spending account contributions are limited to a maximum of $2,500 annually. Employers need to ensure that their cafeteria plan and summary plan description are updated to reflect this change, along with their open enrollment and other plan related materials. The IRS recently clarified that the limit does not apply to fiscal year plans that begin before January 1, 2013.

W-2 Reporting Requirement

ACA mandates that employers report on Form W-2 the value of employer-provided health coverage beginning for 2012 (January 2013 Forms W-2). Employers with an internal payroll system need to ensure that their system is prepared to generate this reporting and those with outside payroll vendors need to make sure that their vendors are prepared to provide this reporting.

Fee to Fund Patient-Centered Outcomes Research Institute

ACA imposes a fee to fund the Patient Centered Outcomes Research Institute. This fee is payable by insurers and by self-insured health plans, for health insurance policy and group health plan years that end after September 30, 2012. The fee amount will be based on enrollment using the “average” number of lives covered under the policy or plan during the year. In the first year, plans will be assessed fees at the rate of $1 per enrollee. The rate increases in the second year to $2, but may be indexed in subsequent years. The annual fee will no longer apply beginning with policy and plan years ending after September 30, 2019.

Medicare Part D Subsidies

Under ACA, for tax years beginning after 2012, an employer’s tax deduction for retiree health care will be reduced by the federal subsidy provided to the employer under its Medicare Part D retiree prescription drug program. Employers will need to review how they account for this ACA change and adjust accordingly.

Grandfathered Plan Status

ACA required group health plans to meet certain requirements in order to maintain “grandfathered” plan status. For plan years after January 1, 2014, a grandfathered plan may no longer decline to extend dependent child coverage to age 26 for individuals that are eligible to enroll in another employer-sponsored health plan.

Tax on Employers Whose Employees Participate in Exchange

Undoubtedly, the most significant upcoming change is the tax ACA will impose beginning in 2014 on employers that provide employee health coverage which is less generous than a threshold level, if this causes any employee to elect to participate in a health care insurance exchange. Employers need to analyze the benefits provided under their health plans and the economic impact of the tax so they can decide on whether to maintain group health plans and what benefits they will provide beginning in 2014. While some employers have already begun this analysis, many decided to wait until after the Supreme Court ruling to begin a meaningful inquiry on this issue.

Tax on "Cadillac Plans"

ACA also imposes a tax on employers providing employee health coverage that is more generous than a threshold level, beginning in 2018. Employers will need, as we get closer to 2018, to analyze the benefits provided under their health plans, and the economic impact of the tax.

Nondiscrimination in Fully Insured Plans

ACA provides that non-grandfathered insured health plans cannot discriminate in favor of highly compensated employees, under rules similar to those that apply to self-insured health plans. Implementation of this provision was administratively delayed by the IRS. Based on the Court's ruling, fully-insured health plans will be subject to these nondiscrimination rules, and implementation rules and an effective date should be forthcoming.

Conclusion

This is only a brief summary of ACA issues facing employers in the coming years, regarding aspects of ACA that have yet to take effect. Butzel Long's Employee Benefits Practice Group is available to discuss the steps necessary to comply with ACA's existing provisions and those that take effect in the coming months and years.

If you have any employee benefit questions, please contact your regular Butzel Long attorney, a member of the Butzel Long Employee Benefits Practice Group, or the author of this Client Alert.

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